

Order pursuant to Section 32.01 of the Railway Safety Act (MO 21-09) Vaccination Mandate for Passengers – Phase 2

From: Transport Canada

Whereas the World Health Organization has characterized COVID-19 as a pandemic and this pandemic is affecting Canada;

Whereas, across Canada, all levels of government are taking measures to mitigate the transmission of COVID-19 or of new variants of the virus causing COVID-19 that pose risks that differ from those posed by other variants but that are equivalent or more serious;

Whereas evidence indicates that vaccines are very effective at preventing severe illness, hospitalization and death from COVID-19, including against the Alpha and Delta variants of concern and that the impact of vaccination on the frequency of outbreaks and the reduction of death rates and hospitalizations has been striking compared to the impact of other tools used prior to vaccination, including physical distancing;

Whereas persons entering Canada are subject to the requirements set by the Minimizing the Risk of Exposure to COVID-19 in Canada Orders issued under the *Quarantine Act*;

Whereas, pursuant to section 32.01 of the *Railway Safety Act*, if the Minister considers it necessary in the interests of safe railway operations, the Minister may, by order sent to a company require the company to stop any activity that might constitute a threat to safe railway operations or to follow the procedures or take the corrective measures specified in the order;

Whereas, pursuant to subsection 4(4) of the *Railway Safety Act*, safe railway operations concern the safety of persons and property transported by railways and the safety of other persons and other property;

Whereas, pursuant to section 36 of the *Railway Safety Act*, the Minister may order that a company provide, in the specified form and within the specified period, information or documents that he or she considers necessary for the purposes of ensuring compliance with the *Railway Safety Act* and with the regulations, rules, orders, standards and emergency directives made under that Act;

And whereas, pursuant to section 45 of the *Railway Safety Act*, the Minister of Transport has, in writing, authorized the Director General, Rail Safety to make an order under sections 32.01 and 36 of that Act.

Therefore, I, Michael DeJong, Director General, Rail Safety, consider it necessary in the interest of safe railway operations to make this order under sections 32.01 and 36 of the *Railway Safety Act* requiring the companies listed in Appendix A to follow the procedures set out below.

Section A: Proof of Vaccination

A railway company listed in Appendix A of this Order must not operate railway equipment on a railway unless the company has verified that every person who boards the railway equipment, who is not a railway company employee, provides a proof of vaccination credential (PVC) as evidence that they are a fully vaccinated person, unless they fall within an exception as described in Section D.

Section B: False declaration

1. The railway company must advise every person who boards the railway equipment that it is:
 - a. an offence under section 131 of the *Criminal Code* to make a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false; and
 - b. an offence under section 366 of the *Criminal Code* to make a false document, knowing it to be false.

Section C: Prohibitions

1. The railway company must not allow a person, who is not a railway company employee, to board railway equipment if the person fails to provide proof of vaccination credential to the company, as required in Section A.
2. For persons that fall under an exception as described in Section D (1), the railway company must not allow a person to board the railway equipment if the person fails to provide a duly completed request in accordance with Section D (2).
3. Notwithstanding Section A and Section C (1), a railway company may operate railway equipment on a railway without verifying proof of vaccination credentials of a person boarding the railway equipment in situations of *force majeure*, including urgent or emergency travel related to evacuations caused by natural disasters (including but not limited to forest fires and floods) but only if the railway company provides a notice to the Minister no later than 2 hours after boarding.

Section D: Exceptions

1. Subject to Section E, a railway company is not required to verify proof of vaccination credential for any person who:
 - a. is not a fully vaccinated person due to medical contraindication and who is entitled to be accommodated by the railway company on this basis under applicable legislation;
 - b. is not a fully vaccinated person due to the person's sincerely held religious belief, or the person's legal guardian's sincerely held religious belief, and who is entitled to be accommodated by the railway company on this basis under applicable legislation; or
 - c. is boarding the railway equipment for the purpose of attending an appointment for an essential medical service or treatment.
2. For the purposes of Section D(1), a railway company must verify that the person has provided:
 - a. in the case of a person with a medical contraindication, 21 days before the day initially scheduled for the departure, a duly completed temporary exception request in relation to medical contraindication;
 - b. in the case of a person with a sincerely held religious belief, or their legal guardian's sincerely held religious belief, 21 days before the day initially scheduled for the departure, a duly completed temporary exception request due to religious belief sworn or solemnly affirmed before a Commissioner of Oaths; and
 - c. in the case of an exception for travel to receive essential medical services or treatment, 14 days before the day initially scheduled for the departure, a duly completed temporary exception request due to

essential medical services or treatment.

3. Notwithstanding the timelines specified in Section D(2), a railway company may accept a duly completed temporary exception request where exceptional circumstances are claimed by the person making the exception request and where operationally feasible for the railway company.
4. For the purposes of Section D(2):
 - a. a railway company must only accept exception requests that are provided in the form specified by Transport Canada; and
 - b. a railway company must ensure that an exception request is submitted for every round trip booking of a person, and must be valid for the period including both the departure and return dates.
5. Subject to section E, and notwithstanding Section 2(c), a railway company is not required to verify proof of vaccination credential for a person traveling for essential medical services and treatment until 23:59 ET December 14, 2021 provided that:
 - a. the person provides a signed document from a medical doctor or nurse practitioner who is licensed to practice in Canada that includes the date of the appointment(s) for the essential medical service or treatment and the location of the appointment(s); and
 - b. the date of the essential medical service or treatment is before December 13, 2021.
6. Subject to section E, and notwithstanding Section 2(a), a railway company is not required to verify proof of vaccination credential for a person with a medical contraindication boarding the railway equipment

until 23:59 ET December 14, 2021, provided that the person provides a medical note, from a medical doctor or nurse practitioner who is licensed to practice in Canada, that demonstrates the contraindication.

7. Subject to Section E, a railway company is not required to verify proof of vaccination for a person who is at least 18 years old and who is boarding the railway equipment for the purpose of accompanying a person referred to in D(1)(c) if the person needs to be accompanied because they:
 - a. are under the age of 18 years;
 - b. have a disability; or
 - c. need assistance to communicate.
8. Subject to Section E, a railway company is not required to verify proof of vaccination credential for any person who is a resident of a community which is:
 - a. only accessible using the VIA Rail Canada Inc. The Pas-Churchill route; or
 - b. any other remote community for whom VIA Rail Canada Inc. may be the only means of transportation.
9. Subject to Section E (2), a railway company is not required to verify proof of vaccination credential for any person that is under the age of 12 years and four (4) months.
10. Subject to Section E, a railway company is not required to verify proof of vaccination credential for any person who is listed:
 - a. In the case of Via Rail Canada Inc, in Appendix B;
 - b. In the case of Great Canadian Railtour Company Ltd., in Appendix C; and

c. In the case of National Railroad Passenger Corporation (AMTRAK), in Appendix D.

11. Subject to Section E, a railway company is not required to verify proof of vaccination credential for a person that is a foreign national, other than a person registered as an Indian under the *Indian Act*, who is boarding the railway equipment if the initial scheduled departure time is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country, as confirmed by evidence of the person's travel itinerary or boarding pass and passport or other travel document issued by their country of citizenship or nationality.
12. Subject to section E, a railway company is not required to verify proof of vaccination credential for a person that is boarding the railway equipment for a purpose other than optional or discretionary purposes such as tourism, recreation or leisure, and who is:
 - a. a person who entered Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response;
 - b. a person who is permitted to work in Canada as a provider of emergency services under paragraph 186(t) of the *Immigration and Refugee Protection Regulations* and who entered Canada for the purpose of providing those services;
 - c. a person who entered Canada after August 31, 2021, who has been recognized as a Convention refugee within the meaning of subsection 146(1) of those Regulations and who has been issued a permanent resident visa under 139(1) of those Regulations;
 - d. a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of the *Immigration and Refugee Protection Act* and who entered Canada after August 31, 2021 as a

protected temporary resident under subsection 151.1(2) of those Regulations

- e. an accredited person;
- f. a person holding a D1, O1 or C1 visa who entered Canada to take up a post and become an accredited person; or
- g. a diplomatic or consular courier.

Section E: Accommodations

1. In the case of persons for whom the railway company is not required to verify proof of vaccination credential by virtue of the exceptions in Section D(1), D(5), D(6), D(7), D(8), D(10) or D(12), the company must verify that the person provides an acceptable proof of a COVID-19 molecular test result. A person's COVID-19 molecular test result is only acceptable under two circumstances:
 - a. a negative result for a COVID-19 molecular test that was performed on a specimen collected no more than 72 hours before scheduled departure time; or
 - b. a positive result for such a test that was performed on a specimen collected at least 14 days and no more than 180 days before the scheduled departure time.
2. A railway company must have in place any other accommodation measures as set out in local public health guidance for persons described under Section D.

Section F: Privacy Requirements

1. The railway company must ensure that personal information is only created, collected, retained, used, disclosed, and disposed of in a manner that respects the provisions set out in applicable Canadian legislation, including but not limited to the *Privacy Act*, *Personal Information Protection and Electronic Documents Act*, or provincial privacy legislation.
2. The railway company must ensure that it only collects the information that is necessary to verify proof of vaccination credential, an exception under Section D or proof of a COVID-19 molecular test result of the person boarding railway equipment and the requirements of this Ministerial Order.
3. If a railway company uses a virtual storage provider, including a cloud storage provider, to store or back passenger or employee data related to vaccination status, the company must ensure that the provider is accredited under a current internationally recognized standard respecting information security management systems.
4. The railway company must ensure that data related to personal information can only be accessed for the purpose of the railway company meeting its obligations under this order.

Section G: Data Collection and Reporting Requirements

1. A railway company must keep a record, on weekly basis and in a manner consistent with requirements outlined in Section F, of:
 - a. passenger volumes;
 - b. the number of exception request received for each category described in section D(1);

- c. the number of exception accepted for each category described in section D(1);
 - d. the number of persons denied boarding due to a person failing to provide acceptable proof of vaccination credential;
 - e. the number of persons denied boarding due to requests not being accepted; and
 - f. In relation to COVID-19 molecular test results obtained for persons falling under the exception described in D(5):
 - i. number of acceptable proof of a COVID-19 molecular test result in accordance with E(1); and
 - ii. number of test results that were not acceptable in accordance with E(1).
2. The company must retain the data referred to in Section G(1), and requests submitted under Section D, for a minimum of 12 months.
3. A railway company must provide to the Minister, on a weekly basis, or at the request of the Minister:
- a. the data referred to in Section G(1); and
 - b. any suspicious patterns detected or documents that may have been false or included false information.

For the purpose of this order,

“accredited person” means a foreign national who holds a passport that contains a valid diplomatic, consular, official or special representative acceptance issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development.

“COVID-19” means the coronavirus disease 2019.

“COVID-19 molecular test” means a COVID-19 screening or diagnostic test carried out by an accredited laboratory, including a test performed using the method of polymerase chain reaction or reverse transcription loop-mediated isothermal amplification (RT-LAMP).

“foreign national” means a person who is not a Canadian citizen or a permanent resident and includes a stateless person.

“fully vaccinated person” means a person who, at least 14 days prior to boarding a railway equipment, has completed a COVID-19 vaccine dosage regimen if:

- a. in the case of a vaccine dosage regimen that uses a COVID-19 vaccine that is authorized for sale in Canada,
 - i. the vaccine has been administered to the person in accordance with its labelling, or
 - ii. the Minister of Health determines, on the recommendation of the Chief Public Health Officer, appointed under subsection 6(1) of the *Public Health Agency of Canada Act*, that the regimen is suitable, having regard to the scientific evidence related to the efficacy of that regimen in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19; or
- b. in all other cases,
 - i. the vaccines of the regimen are authorized for sale in Canada or in another jurisdiction, and
 - ii. the Minister of Health determines, on the recommendation of the Chief Public Health Officer, appointed under subsection 6(1) of the *Public Health Agency of Canada Act*, that the vaccines and the regimen are suitable, having regard to the scientific evidence related to the

efficacy of that regimen and the vaccines in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19.

For greater certainty, a COVID-19 vaccine that is authorized for sale in Canada does not include a similar vaccine sold by the same manufacturer that has been authorized for sale in another jurisdiction.

“proof of a COVID-19 molecular test result” means proof that contains the following information:

- a. the name and date of birth of the person whose specimen was collected for the test;
- b. the name and civic address of the laboratory that administered the test;
- c. the date the specimen was collected and the test method used; and
- d. the test result.

An acceptable proof of a COVID-19 molecular test result includes a paper and digital copy.

“proof of vaccination credential” (PVC) means evidence issued by the government or the non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered, and must contain the following information:

- i. the name of the person who received the vaccine;
- ii. the name of the government or the name of the non-governmental entity;
- iii. the brand name or any other information that identifies the vaccine that was administered; and

iv. the dates on which the vaccine was administered or, if the evidence is one document issued for more than one dose and the document only specifies the date on which the most recent dose was administered, that date.

An acceptable proof of vaccination credential includes: a paper PVC; a digital PVC; or for passengers originating outside of Canada, an ArriveCAN receipt with immunization status denoted, which demonstrates that the person is fully vaccinated. In all cases, the PVC must be in English or French and any translation into English or French must be a certified translation.

This order is effective on November 30, 2021 and remains in effect until it is revoked by the Minister of Transport.

Whereas ministerial order 21-08 provided passengers with a transition period to adjust to the vaccine requirements.

Therefore, I find it necessary in the interest of safe railway operations to repeal the ministerial order 21-08, effective immediately.

Pursuant to subsection 32.1(1) of the *Rail Safety Act* (RSA), a person to whom an order is sent under section 32.01 of the RSA may, on the date specified in the order, file a request for a review with the Transportation Appeal Tribunal of Canada (Tribunal).

If you intend to request a review of this Order, you must file a request in writing with the Tribunal, which must be postmarked no later than December 30, 2021. Requests for review must be filed with:

The Registrar
Transportation Appeal Tribunal of Canada
333 Laurier Avenue West, Room 1201

Ottawa, ON

K1A 0N5

<http://www.tatc.gc.ca>

Pursuant to section 32.3 of the RSA, an order issued under section 32.01 of the RSA shall not be stayed pending a review requested under section 32.1, an appeal under section 32.2 or a reconsideration by the Minister of Transport under subsection 32.1(5) or 32.2.(3) of the RSA.

Michael DeJong

Director General, Rail Safety

APPENDIX A

Great Canadian Railtour Company Ltd.

National Railroad Passenger Corporation (AMTRAK)

VIA Rail Canada Inc.

APPENDIX B

Via Rail Canada Inc.

APPENDIX C

Great Canadian Railtour Company Ltd.

APPENDIX D

National Railroad Passenger Corporation (AMTRAK)



Transport Canada is closely monitoring the COVID-19 situation. In response, we have issued some **transportation-related measures and guidance**. Please check if any of these measures apply to you.

You may experience longer than usual wait times or partial service interruptions. If you cannot get through, please **contact us by email**.

For information on COVID-19 updates, please visit **Canada.ca/coronavirus**.

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